

# THE BLUE SHEET

NOVEMBER/DECEMBER 2004



EDITOR: JUDI SMAS

## **CALENDAR & JOURNAL OF THE 2004 SESSION - HOUSE & SENATE**

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Some items of note are:

- |             |                                                                                                                                                                                                                     |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11/16/04    | Commission on Education of Deaf and Hard of Hearing Persons in NH. This is a regular meeting beginning at 10:00 a.m. in Room 105-A, SH                                                                              |
| 11/23/04    | Commission to Study Long-Term Care Reimbursement. This is a regular meeting beginning at 1:00 p.m. in Room 306, LOB                                                                                                 |
| 12/6/04     | NH Brain and Spinal Cord Injury Advisory Council. This is a regular meeting beginning at 2:00 p.m. in Room 205, LOB                                                                                                 |
| HB 138-FN   | Committee Report relative to interpreters for the deaf in certain governmental or public proceedings. Committee felt this matter was being handled by the courts already and so this bill was not necessary.        |
| HB 1365-FN: | Committee Report relative to protecting hearing ear dogs, guide dogs, and service dogs. Committee felt this bill reflected the nationwide trend towards protection of these animal/companions and should be passed. |

HB 1232-FN: Committee Report relative to free tuition for person with disability provided a seat was available. Committee felt this bill was not appropriate at this time.

**DEPARTMENT OF JUSTICE FORMAL SETTLEMENTS**

- In the U.S. District Court for the Eastern District of Louisiana, the EEOC was victorious in a disability discrimination suit against DuPont for illegally requiring a long-time employee with severe walking impairments to take a 5-6 hour non-related functional capacity exam (which she passed) and subsequently forcing her into permanent disability retirement and involuntary termination. Personnel from DuPont admitted on the stand that, in direct contrast to the terminating official's testimony, the employee was not a "direct threat" to the company. The EEOC has vowed to continue its aggressive prosecution disability discrimination.
- The Department settled its lawsuit in the U.S. District Court for the District of Massachusetts against the State and Bristol County for allegedly violating the ADA by failing to make the services, programs, and activities of the county's trial courts and registries of deeds accessible to individuals with mobility impairments. The lack of physical accessibility or other alternative arrangements – courtrooms and offices were located up flights of stairs in buildings without ramps or elevators – allegedly prevented the two lawyers with disabilities identified in the complaint, and other lawyers, parties, witnesses, jurors, spectators, and citizens with disabilities, from gaining access to the services of five courthouses and three registries of deeds offices. Under the agreement, Massachusetts will make structural changes at each courthouse by constructing an elevator or ramp, along with accessible restrooms. The agreement also calls for modifications of procedures to ensure that any services or programs located in inaccessible areas in a courthouse will be provided in an accessible area.
- The Department entered into an agreement with the City of Fort Payne, Alabama, resolving a complaint that the second floor of the Fort Payne City Hall is inaccessible to individuals with mobility impairments. Under the agreement, the Department will review the city's proposed architectural drawings for the new city hall facility that it is building to ensure that it complies with the ADA. Until the new facility is constructed, the city agreed to relocate meetings and court proceedings to accessible areas within the existing city hall building and to make sure its current procedures for providing alternative access are well publicized and widely disseminated, including by attaching a notice to all traffic citations and other court notices.
- The U.S. Attorney's Office for the Southern District of Iowa entered into an agreement with the City of Des Moines, Iowa, resolving a complaint brought by the City Access Advisory Board alleging the Simon Estes Amphitheater,

a newly constructed riverside outdoor amphitheater owned by the city, was not accessible to wheelchair users. The complaint alleged there was no accessible route to the stage and no wheelchair seating. The city agreed to install a lift to provide an accessible route from street level to the lower area of the amphitheater; install a ramp to allow access onto the stage; designate wheelchair and companion seating, and provide assistive listening devices.

- The Department and Walla Walla County, Washington, entered into an agreement to ensure effective communication at the Walla Walla county jail. An individual who is deaf alleged the jail facility lacked a TTY and failed to provide qualified sign language interpreters. The county agreed to purchase a TTY and to provide qualified sign language interpreters and other auxiliary aids to ensure effective communication.
- The Department reached an agreement with a private attorney resolving a complaint alleging he failed to provide a sign language interpreter to a client who is deaf and uses American Sign Language as her principal means of communicating. The attorney agreed to provide qualified sign language interpreters to clients with hearing disabilities, when requested to do so, at no charge to the client. He also agreed to pay \$2,200 to the client, to forego any further amount she owes him, and to post an announcement in his office stating his willingness to provide sign language interpreters upon request.
- The Department entered into an agreement with Extended Love Child Development Center of Pleasant Prairie, Wisconsin, to resolve a complaint by the mother of a child who is deaf alleging the center refused to provide sign language interpreters for communication-intensive activities, such as field trips, and, as a result, her child was denied an equal opportunity to participate in center activities. The center agreed to provide qualified sign language interpreters or other auxiliary aids and services when needed to ensure effective communication with deaf or hard of hearing children or parents. It also agreed to train its staff on providing auxiliary aids and to do an age-appropriate presentation on communicating with people with hearing disabilities for classmates of any child who is deaf or hard of hearing.
- The Department entered into an agreement with New Horizons Computer Learning Center of Windsor, Connecticut, a private company that provides courses in computer science. An individual who is deaf alleged the company asked him to provide, at his own cost, a sign language interpreter so that he could participate in the company's programs on an equal basis with other students. New Horizons agreed to adopt a new policy providing for appropriate auxiliary aids and services where necessary to ensure effective communication, including qualified interpreters, at no cost to the student or applicant.

- The U.S. Attorney's Office for the Northern District of Ohio signed an agreement with Dr. Jwa-il James Seo resolving a complaint alleging that he failed to provide effective communication. The complainant, who is deaf, scheduled a medical appointment for her five-year-old son. At the appointment, the complainant and Dr. Seo attempted to communicate by writing notes, but both agreed they were unable to communicate effectively in this manner. Dr. Seo later told the complainant he could no longer treat her son because he could not afford to pay for a sign language interpreter. Under the settlement, Dr. Seo agreed to provide auxiliary aids, including sign language interpreters, for the complainant and all other individuals who need such aids. He also agreed to post a sign in a conspicuous place to notify patients he will provide sign language interpreters or other appropriate auxiliary aids or services when they are necessary for effective communication with patients or their companions.
- The U.S. Attorney's Office for the Eastern District of Michigan entered into an agreement with Mancino's Restaurant of Brighton resolving a complaint involving denial of access to a service animal. The complainant, who is a person with a disability who uses a service dog, attempted to attend a social engagement at the restaurant. The owner allegedly refused to permit the complainant to remain in the restaurant because of the presence of her service dog and threatened to call the police if she did not remove the dog from the premises. Mancino's agreed to post a policy welcoming service animals in a prominent place at the restaurant, train its employees on the new policy, and pay the complainant \$1,000 in damages.

### **MEDIATION**

- In Ohio, a person who uses a service animal that alerts her to oncoming seizures was denied access to a medical center. Although the participants agreed the hospital had an appropriate, existing policy regarding service animals, the hospital agreed to educating its office staff about the policy, with particular focus on helping staff identify and work with persons with disabilities using service animals when they did not appear to have a disability.
- A person using a wheelchair complained that although a Virginia hotel claimed to be accessible, the incline at the entrance was too steep for wheelchair access, and an "accessible" guest room had an inaccessible bathtub. The hotel agreed to install a properly sloped ramp with handrails and installed bathtub transfer benches in accessible guest room bathrooms.
- In Illinois, a person who is deaf complained that a theater did not provide sign language interpreters for dramatic performances. The theater agreed to provide one interpreted performance for patrons who are deaf or hard of hearing for every run of each play, regardless of whether a request had

been received, and to include the schedule of all interpreted plays in its advertising. In addition, the respondent provided compensation and attorney fees to the complainant.

- An individual who is blind complained that a motel in Missouri refused him a room because he used a guide dog. The motel agreed to post a sign welcoming persons with service animals and to train front-desk staff and management on the ADA. The motel also agreed to work with the regional corporate office to increase awareness of all franchise motel owners about the ADA's requirements relating to service animals and made donations of \$150 each to two guide dog organizations.

### **FEDERAL LEGISLATION**

Congress is considering legislation focusing on a number of issues of concern to people with disabilities. Those bills include the following:

- Appropriations – As the legislative session comes to a close, advocates expect several appropriations bills to again be combined into one large “omnibus” bill. Advocates are watching the process carefully to help stave off potential cuts to human services programs.
- Family Opportunity Act (S. 622, H.R. 1811) – This allows middle-income families to buy into the Medicaid program on behalf of children with disabilities. While the Senate passed its version of the bill in May, the House has not taken any action on its version of the bill.
- Improving Access to Technology for Individuals with Disabilities Act of 2004 (H.R. 4278) – The House passed this legislation unanimously in June, and the Senate referred it to the Committee on Health, Education, Labor, and Pensions.
- Workforce Investment Act (S. 1627, H.R. 1261) – This contains the reauthorization of the Vocational Rehabilitation Act and other provisions important to people with disabilities. Both the House and Senate passed their own versions of the bill, but the Senate has not yet appointed members to the conference committee. Advocates do not expect progress this year.
- Landmark decision issued in class action by workers who are deaf vs. UPS. In October, San Francisco federal district court ruled in favor of 1,000+ workers who are deaf in their class action suit. The suit alleged that UPS – systematically engaged in discriminated against employees who are deaf by not allowing them to apply for driving positions. Employees and applicants testified that UPS refused to consider people with hearing impairments for open positions despite their

seniority. UPS' defense was based on the notion that people who are deaf are inherently unsafe drivers. The Court found that UPS had not met its burden of proof and determined that the workers should be given the same opportunities as that of a hearing applicant. This ruling insures that UPS and other firms can no longer deny workers with disabilities such basic rights as job advancement.

- In a case against the City of Cambridge, Ohio, a complaint was filed alleging that barriers exist making programs, services and activities offered in the several public buildings inaccessible to persons with mobility and hearing & visual impairments. The City of Cambridge was instructed to correct the situation by developing, adopting, and implementing written procedures for providing an interpreter at no expense to any individual or group of individuals with disabilities; ensuring that court proceedings are readily accessible; posting copies of the Policy; and locating an alternate accessible trial site. The City must also report to the court on the outcome within 180 days but has up to 2 years to make corrections to specific buildings.

Visit [www.thomas.loc.gov](http://www.thomas.loc.gov) to follow the progress of these and other bills.

### **MEDICARE NEWS**

- A new era has begun for Medicare. The new director, Dr. Mark McClellan, has initiated a new policy for the bureau that includes paying for "a number of new and expensive treatments and diagnostic tests". The catch is that Medicare recipients that want the new drugs, tests, etc., must agree to enter into a study that evaluates their use. The idea behind the new initiative is to achieve reliable statistics for cost-effective medicine. Currently, the FDA does initial studies but this leaves many holes in the information regarding how well they work and on whom. This new program will help fill in those gaps – and with 41 million recipients, there is the potential to get a lot accomplished.

### **MINI-SEMINARS BEGIN**

- The Governor's Commission on Disability has begun its Fall/Winter Mini-Seminar Series again all taking place on a designated Wednesday afternoon from 2:00-4:00 pm at the Commission's Concord office (57 Regional Drive). During the months of December, January, and February, the workshops will be technical in nature and will focus on: (December 15<sup>th</sup>) ADA Guidelines Part II: Accessible Route, Communication Elements; (January 12<sup>th</sup>) ADA Guidelines Part III: Plumbing & Communication Elements and Features Communication Elements; and (February 16<sup>th</sup>) a repeat of the ADA Accessibility Guidelines, ANSI A117.1-1998 Part I: Scoping; Accessibility Basics; Building and Site Element. Cheryl

Killam, the Commission's Accessibility Specialist will conduct these workshops. If you would like to attend these or other mini-seminars, contact Gayle Baird at 1-800-852-3405, ext. 6634. If you or your organization would like to present a seminar at a future date, please contact Gayle for available dates.

### **WZID CHRISTMAS IS FOR KIDS AUCTION – 2004**

- WZID and Child and Family Services proudly present the **6<sup>th</sup> annual WZID Christmas is for Kids Auction** to fulfill the holiday wishes of disadvantaged children throughout New Hampshire. Broadcast live from the Mall of New Hampshire, the event happens Thursday and Friday, December 2 and 3, from 9 a.m. to 5 p.m. each day.

Christmas is for Kids attracts hundreds of businesses and individuals who donate goods and services to be auctioned off. In past years, the auction block has featured a bountiful selection of items including vacation packages to Orlando and Cancun; concert tickets to see such performers as Cher, Elton John, and Aerosmith; ski packages; computer software; airline passes; college courses; wedding photography packages; and tickets to theatrical and sporting events.

Donate an item or service to the WZID Christmas is for Kids auction or sponsor the auction broadcast and be sure to tune in to WZID and place your bid.

### **CONGRATULATIONS**

- Cheryl Killam, the Accessibility Specialist at the Governor's Commission on Disability, has been appointed to the Access Board Courthouse Access Advisory Committee. This month she traveled to Washington, D.C. to meet with other members of the Committee. The purpose of the committee is to promote access to courthouses as part of an overall plan for targeted outreach on different aspects or spheres of accessibility. They will also explore issues related to the accessibility of courthouses: including best practices, design solutions, promotion of accessible features, educational opportunities, and the gathering of information on existing barriers, practices, recommendations, and guidelines. This information is intended to supplement design guidelines the Board previously issued for judicial facilities under the Americans with Disabilities Act.
- It is with much regret that we inform you that our Editor, Judi Smas, will be retiring at the end of November and is planning on joining her husband in a sunnier climate. Judi began her career at the State Library and has been with the State of NH for 36 years, including the Governor's Commission on Disability for the past 6 years. We want to wish her the best and thank her

for her tireless efforts on behalf of the Commission and the *Blue Sheet* where she has done an excellent job. Best of Luck to you Judi!

### **NEWSLINE IS AVAILABLE IN NEW HAMPSHIRE -- REGISTER NOW!**

New Hampshire welcomed NEWSLINE thanks to the generosity of the Verizon Foundation.

### **WHAT IS NEWSLINE?**

NEWSLINE, produced by the National Federation of the Blind (NFB), is a free newspaper reading service for people who, because of a disability, cannot read regular newsprint.

### **HOW DOES NEWSLINE WORK?**

By dialing into the system on any push-button phone and following the voice prompts, subscribers can choose newspapers such as *USA Today*, the *New York Times*, the *Washington Post*, the *Los Angeles Times*, or the *Wall Street Journal*, as well as local papers from throughout the United States whenever they wish.

Registered subscribers dial a local or toll-free number on a standard touch-tone telephone, whether at home or when traveling throughout the United States. Each reader inputs a personal ID and security code, then follow the voice prompts. Readers can easily choose which newspaper, national or local, and which section or article from that day's, the previous day's, or the previous Sunday's issue of each newspaper on the service. Over 100 papers are available 24 hours a day, seven days a week. The menu provided even allows the user to change the speed and voice quality, spell out names, or search for words. The few phone button commands are easy to remember but NEWSLINE has a help page for a refresher on commands if needed.

### **WHO WILL FIND NEWSLINE USEFUL?**

Anyone who cannot read conventional print due to a disability is eligible for this free service and can subscribe by filling out a simple application form.

- Children who are blind or visually impaired or who cannot physically hold a newspaper will be able to research their own civics assignments to do their homework independently.
- Seniors who find that reading the daily newspaper is no longer possible due to vision loss will once again be knowledgeable and able to participate actively in community affairs.

- NEWSLINE is at last making it possible for individuals with disabilities to gain ready access to information at the same time as their colleagues, friends, and family members.

#### **HOW DO YOU GET INVOLVED?**

- To register as a subscriber, call the New Hampshire State Library, Services to Persons with Disabilities (Talking Book Library) at (800) 491-4200 or (603) 271-3429, or download the application form from [www.nfb.org/newsline1.htm](http://www.nfb.org/newsline1.htm), or call the National Federation of the Blind in Baltimore, Maryland, at (410) 659-9314, and request this free service.
- If you would like further information, contact the NFB of New Hampshire, Bruce Gillis: (603) 749-4156, or email: [bruce\\_gillis@yahoo.com](mailto:bruce_gillis@yahoo.com)
- The numbers of participating papers are steadily growing. If you wish to have your local paper on NEWSLINE or if you are a newspaper representative who would like to make your paper available, contact the National Federation of the Blind at [nfb@nfb.org](mailto:nfb@nfb.org), or call during business hours, 8 a.m. to 5 p.m. Eastern Time.

Note: The Verizon Foundation is the philanthropic arm of Verizon Communications, one of the world's leading providers of communication services. The foundation uses its resources in the United States and abroad to develop partnerships in technology and connect them with organizations serving the needs of diverse communities, people with disabilities, victims of domestic violence, and the economically and socially disadvantaged. For more information on the foundation, visit [www.verizon.com/foundation](http://www.verizon.com/foundation).

#### **SAVE THE DATE!**

- A conference promoting living, learning, and working together will be held March 8<sup>th</sup> from 8:30 till 4:30 and March 9<sup>th</sup> from 8:30 till 1:30 at the Crowne Plaza Hotel in Nashua, NH. This conference, given by DHHS' Minority Health Office, is for everyone who wants to maintain and strengthen the work force by promoting independence in our diverse communities. Attendees will learn how to use strategies, experience new technologies, increase resources, and expand business potential. Speakers will be Kari Heistad, Culture Coach and Fulbright Scholar and Russell Weatherspoon, Dean of Residential Life, at Phillips Exeter Academy. To register or for more information call 271-5991. TTY Access 1-888-396-3459.